

IN THE SENATE OF THE UNITED STATES.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

Application for appropriation to cover the claim of James M. Schaumburg.

JUNE 30, 1892.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT, *June 29, 1892.*

SIR: I have the honor to transmit herewith, for the consideration of Congress, application for an appropriation in the matter of the claim of James M. Schaumburg for pay and allowances due him as lieutenant of dragoons from July 1, 1836, to March 24, 1845, \$11,165.31.

Respectfully, yours,

CHARLES FOSTER,
Secretary.

The PRESIDENT OF THE SENATE.

WASHINGTON, D. C., *June 25, 1892.*

SIR: Application on behalf of James W. Schaumburg for pay and allowances due him as lieutenant of dragoons from July 1, 1836, to March 24, 1845, was presented to your Department in 1882 with request that his claim should be properly audited and paid.

In pursuance of this appeal, after examination by the accounting officers of the Treasury, your Department transmitted the case together with the papers to Congress asking for an appropriation. See letter of Hon. Charles J. Folger, Secretary of the Treasury, under date of July 11, 1882, addressed to Hon. William B. Allison, chairman of Senate Committee on Appropriations. This letter of transmission, it appears, reached the Senate too late for the claim to be embraced in the then pending deficiency bill.

Subsequently the case was again transmitted by your Department to Congress with a similar request, as yet, however, this claim, decided to be due and payable by the Supreme Court of the United States, has not been paid.

On behalf of the devisees and legal representatives of said Schaumburg, I have the honor to request that you will transmit to the chairman of the Senate Committee on Appropriations this application, and your request for an appropriation to enable you to pay this claim without further delay.

The amount found to be due him by the United States circuit court of the eastern district of Pennsylvania, and affirmed by the Supreme Court of the United States, for his pay and emoluments as first lieutenant of dragoons from July 1, 1836, to March 24, 1845, is the sum of \$11,165.31. (See Senate Report Fifty-first Congress, No. 95, herewith inclosed.)

Truly, yours,

J. COLEMAN.

Hon. CHARLES FOSTER,
Secretary of the Treasury.

Senate Report No. 95, Fifty-first Congress, first session.

Mr. MITCHELL, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 986.]

The Committee on Claims, to whom was referred the bill (S. 986) for the relief of James W. Schaumburg, having had the same under consideration, beg respectfully to submit the following report:

A similar bill was before this committee at the second session of the Forty-ninth Congress, when the following report (No. 1626) was agreed to. This report was also adopted by this committee at the first session of the Fiftieth Congress. It is as follows:

Your committee find, upon a full examination of this claim, that the rights of the claimant depend upon the single question whether he ceased to be a first lieutenant in the Army in consequence of an order issued by the Adjutant-General, June 30, 1836. If that order was legal and valid the claim is without merit, and if it was invalid there can be no doubt the claimant is justly and legally entitled to the amount named in the bill.

The circumstances under which the order was issued are fully set forth in a letter written by ex-President Jackson, June 12, 1843. In this letter General Jackson sets out in detail the methods resorted to by certain officers unfriendly to the claimant, in an attempt to find or create a technical ground for unjustly depriving the claimant of his position as lieutenant in the Army. The facts narrated in this letter, and substantiated by the records of the War Department, tend to convince your committee, as they then convinced General Jackson, that issuing the above order of the Adjutant-General was a wrongful usurpation; that the order was without authority and void, and that the claimant continued a lieutenant, entitled to the pay and emoluments of the position.

President Tyler was of the same opinion, and his official letter of date January 24, 1845, said:

"I have only to say that on a thorough and minute examination of your case, and a most patient and elaborate examination of all the facts and circumstances, I came to the conclusion that you had never been properly out of the Army."

And he says he based his official action on that conclusion.

The same conclusion was reached by other distinguished men connected with the administration of the Government, many of whom expressed their indignation at the wrongful attempt to deprive Lieutenant Schaumburg of his position in terms not much less emphatic than those employed by General Jackson.

Secretary Folger, upon an examination of the facts of the case, and upon learning that the accounting officers considered the case not open for their consideration because it had been acted upon by the Auditor and Comptroller in former years, was so strongly impressed with the absurdity of the rulings made on this subject in 1845 that of his own motion he addressed a letter to the Senate Committee on Appropriations, recommending—

"That authority be given to the accounting officers of the Treasury to audit and allow the claim and that an appropriation of \$11,000, or so much thereof as may be necessary, be provided for its payment."

If the validity of the order of June 30, 1836, purporting to relieve Lieutenant Schaumburg from the military service could properly be considered an undetermined

question, it might be the duty of the committee to set forth in detail the personal considerations and influences that originated the order, but the illegality and invalidity of the order and of the attempt to deprive Lieutenant Schaumburg of his position in the Army has been directly and conclusively settled by a judgment of the district court of the United States for the eastern district of Pennsylvania, and the judgment was affirmed on appeal to the Supreme Court of the United States.

In an action between the United States and the claimant, commenced in the district court in September, 1874, and determined in November, 1875, the legality of the order and the question whether the claimant, Schaumburg, was a lieutenant during the period in question, was directly in issue, and the court, having before it the orders of the War Department, made during the attempt of Lieutenant Schaumburg's enemies to deprive him of his position in the Army, and the entire records relative to the subject, instructed the jury, as a matter of law, that Schaumburg, "from July 1, 1836, until March 24, 1845, was in the military service of the United States as a first lieutenant of dragoons or cavalry, and that he was entitled as such to credit for the pay and emoluments that accrued during that period," and a verdict and judgment were rendered in accordance with the instruction. This judgment was a judicial determination of the invalidity of the order, and that Lieutenant Schaumburg continued in the service. From this judgment an appeal was taken to the United States Supreme Court, and the judgment was affirmed. (*Schaumburg v. United States*, 13 Otto, 667.)

The court, under the issues presented, having full jurisdiction to determine Schaumburg's right to the office and to its emoluments, the nature of the issues required present payment or allowance in that cause of only \$306.20 of the \$11,471.51 then due to Schaumburg, thus reducing the indebtedness to \$11,165.31; and it not being the province of the district court to render judgments directing present payment by the Government, this balance still remains unpaid. But as it was within the jurisdiction of the court to ascertain and determine whether Mr. Schaumburg was in the Army, and entitled to pay, in order to determine whether the set-off should be made, the judgment is conclusive on whatever question was necessarily involved in that suit. It is, in the opinion of your committee, conclusive that Schaumburg was a lieutenant in the Army, notwithstanding the order of June 30, 1836, and of all that is material in the present claim, it being an elementary principle that the judgment of a court having jurisdiction is conclusive of the point determined in any future inquiry between the same parties relative to the same subject-matter.

Although this judgment would seem to render a further consideration of the validity of the order unnecessary for any purpose of determining the legal rights of the claimant, consideration for the hardships and delays to which the claimant has been subject for want of a full understanding of the questions involved may justify a brief statement of the points originally involved.

Long prior to 1836 it had become a practice, having the approval of the War Department, that when some emergency rendered it important to an officer that he should absent himself from a distant post of duty sooner than it was possible to obtain an order granting leave of absence, the officer, at his own risk, made a formal tender of his resignation, conditioning the resignation to take effect at a specified future time. The resignation was inclosed with a letter explaining the emergency, asking the leave of absence, and requesting that the resignation be not accepted.

On the 6th of June, 1836, Schaumburg, then being a second lieutenant and stationed at Fort Des Moines, was informed that his father was sick and could not survive many weeks, and he sent such a letter with his resignation as second lieutenant, conditioned to take effect October 31 following.

June 28, 1836, the War Department issued an order forbidding the further continuance of that practice, and requiring all officers then absent under that practice to resume their duties within three months or to vacate their commissions. It also contained the following:

"If the resignation of any officer be accepted, it shall take effect within thirty days from the date of the order of acceptance."

By misconstruction of this language and misconception of legal rights the Adjutant-General issued an order on the 30th of June, 1836, purporting to accept the resignation of Second Lieutenant Schaumburg, to take effect July 31, 1836, disregarding the condition that had been made part of the proposed resignation; and in attempting to give force to the action then taken on the qualified resignation as second lieutenant, the Adjutant-General ignored the fact that after this attempt, namely, on July 1, 1836, Schaumburg was promoted and received a re-appointment to the position of first lieutenant, being duly commissioned on July 1, 1836. Schaumburg subsequently accepted the office of first lieutenant.

The incidents referred to in this connection occurred in the following order:

June 9, 1836, Second Lieutenant Schaumburg tendered his resignation as second lieutenant, conditioned to take effect October 31, 1836; June 28, 1836, a general order was issued changing the practice; June 30, 1836, an order was issued purporting to

accept the resignation of Schaumburg, to take effect July 31, 1836; July 1, 1836, Schaumburg was commissioned first lieutenant; July 12, 1836, he heard for the first time of the attempt to accept his resignation contrary to its terms, and on that date he wrote from Wheeling, Va., to the Secretary of War, withdrawing his resignation and asking the benefits of the general order. Afterwards he heard of and accepted his appointment as first lieutenant.

Your committee attach hereto the letter of ex-President Jackson, herein referred to, and in which the history of this case is fully, clearly, and graphically set out. Also, the letter of Secretary of the Treasury Folger, recommending the payment of this claim. That all the questions, however, involved in this claim may be passed upon judicially, in a direct manner, your committee report back as a substitute for Senate bill 1006, the accompanying bill, and recommend its passage.

THE HERMITAGE, June 12, 1843.

Lieut. JAMES W. SCHAUMBURG, *Philadelphia, Pa.:*

MY DEAR SIR: I received your letter with a statement and accompanying documents relating to your having been irregularly put out of the Army.

I first note that you were stationed at Fort Des Moines, on the Upper Mississippi, and that you had learned from your family at New Orleans your father was sick and could not survive many weeks, and you applied to your commanding officer, Lieut. Col. S. W. Kearney, to then allow you to go to New Orleans to visit your good father, fearing he would not live until a leave of absence could be granted and come from Washington. This reasonable request to leave was refused by Lieutenant-Colonel Kearney, which was very unfeeling and discreditable to him, as such an indulgence, when no great public necessity forbade you leaving your post, should have been granted. There appears to have been no such obstacle; and therefore the refusal could only have been owing to personal ill-will or a degree of insensibility unbecoming any officer.

The refusal of your commanding officer compelled you to write to Washington for a leave of absence to enable you to go and see your dying parent. Some weeks elapsed before your application was returned. The commanding general indorsed on your application that the leave for three months to go to New Orleans would be granted, providing the commanding officer should deem it proper to allow it. This was no better than a refusal, as it left it to be granted or not to your commanding officer who had improperly refused you. He did not think it proper to grant it. It appears that Lieutenant-Colonel Kearney had placed you in arrest, though no charges were ever preferred against you, and he based his refusal to allow you a furlough because he expected a court-martial would some time or other convene for your trial and you could not leave. You remained in arrest over eight months; no court was ever ordered for your trial, and no charges were ever written or presented against you, and Lieutenant-Colonel Kearney himself was ordered away from the post and you still in arrest up to the 6th of June, 1836.

Colonel Kearney having left you at the post under command of Capt. E. V. Sumner, Colonel Kearney instructed him (Captain Sumner) to hold you in arrest. After Lieutenant-Colonel Kearney, you applied to Captain Sumner to grant you the leave sent from Washington, which left it to the commanding officer to grant or not. Captain Sumner answered that he could not let you go for the reason that Colonel Kearney had instructed him on leaving not to grant it. This was not creditable to Colonel Kearney, and Captain Sumner, being commanding officer of the post, was not under Colonel Kearney's orders after he had left to command elsewhere. The responsibility for your presence or absence was not upon Colonel Kearney, but upon Captain Sumner, and had he granted you the three months' leave sent from Washington, he was not responsible for your absence. Captain Sumner refused to let you go for the reason stated, and finding yourself thus blocked, and as it strikes my mind forcibly, the purpose aimed to be accomplished was obtained. You wrote a letter of resignation on the 6th of June, 1836, to the Secretary of War, requesting the acceptance of your resignation, to take effect the 31st of October following.

You were a second lieutenant of the regiment of dragoons. Accompanying this letter was your letter to General Macomb, general commander-in-chief, expressing your sincere regret in being thus obliged, to enable you to go to New Orleans, to write your resignation; the more so as you were in arrest, with charges alleged against you, and you expressed an earnest wish that your resignation would not be accepted, at least not until you had an opportunity to defend yourself before a court-martial.

This was as honorable as your request was reasonable, and should have been so appreciated by the commanding general. Captain Sumner very properly recommended, in his letter to the Adjutant-General covering your tender of resignation and your letter requesting an investigation, that your earnest request should be granted.

Your reasonable and honorable request which Captain Sumner, with good feeling, thought should be granted to you, was disregarded, and the time conditioned in your letter for your resignation to take effect, to wit, the 31st of October, was shortened, and Lieutenant-Colonel Kearney wrote to the Adjutant-General expressing his most sincere hope that you would not be permitted to withdraw your resignation, which was an impertinent officiousness, as it was from personal feeling against you, and none of his business. The Special Order No. 44, dated June 30, 1836, says: The following resignations have been accepted by the President, to take effect at the date set opposite their names, respectively, and your name is given in the list as resigning as first lieutenant, and the date for it to take effect is the 31st of July, 1836.

The letter you wrote was of your resignation of the office of second lieutenant and not that of the higher office of first lieutenant, which, as you did not resign, the Executive or "proper authorities" could not have accepted as stated in the general order. You were some time before entitled to be a first lieutenant, but at the period of writing your resignation you were a second lieutenant, not having been promoted or notified of your promotion. If you had been you would not have written your resignation and signed yourself as a second lieutenant. You conditioned your termination of service to be the 31st of October. One thing or the other, if an officer has the right to specify the time to which his services end, and if the authorities are unwilling to allow the time it is for them so to acquaint him and say what time would be allowed. If he likes the terms he would agree, and if he did not he would remain; but the authorities have no right to alter the time by any arbitrary order. I would not have permitted such a thing to be done.

An officer's commission in the military service of his country is a vested right which he holds under the laws for the government of the Army and Navy, and can not be infringed upon. I consider the pretended acceptance of your resignation of your office as a second lieutenant as an official misdemeanor, which, had you brought the facts to my knowledge when I was President, I would have dismissed the officers who so disgracefully connived at your separation from the Army, as the facts in your case exhibit in the documents before me.

I notice in the Army Register, in the list of officers below you in the regiment, the name of A. S. Macomb as a brevet second lieutenant, that the acceptance as illegal of your resignation advanced that officer, and he is a son of the commanding general by whose orders the special order promulgating your resignation was issued by the Adjutant-General, who should not have obeyed or countenanced the command, as he must have known it was a false proceeding. It appears you went to New Orleans as expeditiously as you could, and made haste to go to Washington to prevent your resignation from being acted upon. You wrote from St. Louis, New Orleans, and Wheeling to the Adjutant-General and to General Macomb, asking not to act upon your resignation; and at Wheeling you wrote to claim the benefit of the President's direction, published in General Order 43, dated June 28, 1836.

This order I remember to have directed the Adjutant-General to issue. * * *

As your resignation was dated on the 6th of June, twenty two days before the date of the order, viz, the 28th of June, you were entitled to the privilege expressed in the second paragraph, which referred to all such as had resigned at some date anterior to the date of the order. Your resignation was received, as appears by the Adjutant-General's indorsement, 23d June, which was five days before the date of the order. If this is denied, and the only proof that it was accepted after is the Order No. 44, 30th June, in which your name is mentioned as resigning your office of second lieutenant, and as accepted to take effect the 31st of July, two days after the Order No. 43, viz, the 30th of June, then it convicts the military officials of the War Department of a premeditated purpose to exclude you from the privilege of the paragraph which was to cover all resignations offered or accepted before the date of the order, and it is clear that the purpose was to exclude you by saying your resignation was comprehended under the prospective paragraph of the Order 43, which could not possibly be so, as the paragraph was notice to all who resigned after the date of the order that their resignation, if accepted, would be accepted to take effect thirty days after the date of the acceptance.

Your tender of resignation was twenty-two days before the date of the Order 43, and the excluding you from it, under the prospective paragraph, was dishonest, and such an act should be severely punished. The integrity of the records of the Adjutant-General's Office, by that act against you, carries with it a blemish which should be wiped out. It appears that you went to Washington and reported to the Adjutant-General, claiming the benefit of the President's directions contained in the General Order No. 43, and you were answered that your resignation had been accepted, to take effect the 31st of July, 1836.

According to the second paragraph of General Order No. 43, you reported in person on the 22d of July. The order allowed to all officers whose resignations had been effected to take effect at some prospective date who would "elect" to continue in the

service three months to join their corps or regiment. You went to the General-in-Chief to report yourself and ask that the matter might be corrected. He answered that nothing could be done. Your resignation was accepted to take effect as stated in the Special Order No. 44, to wit, the 31st of July, and it could not be canceled.

You protested in writing against this order, and claiming the benefit of the President's directions, as you had come to report for orders to return to duty, and that the Order No. 44 was false in saying the President had accepted the resignation of your office of first lieutenant, which you had not resigned. You stated that, as neither the General-in-Chief nor the Adjutant-General would do anything in the matter, you called on the Secretary of War, and stating the facts to him he said that you should be righted, but asked you to let the matter rest, as it would be embarrassing to revoke or cancel the Order 44, and that on the occurrence of a vacancy of first lieutenant you would be ordered back to your regiment. Upon this assurance of the Secretary of War, General Cass, you went to your home to await a vacancy for first lieutenant and orders thereon.

General Cass left the War Department before a vacancy occurred; at all events you were not afterwards ordered to return to duty. You some time after wrote to Mr. Poinsett, Secretary of War, who succeeded General Cass. He answered you that he could not see any difference in your resignation or the acceptance of it from any ordinary resignation, and, therefore, that he could not order your name to be replaced on the Army roll. Mr. Poinsett came to this conclusion by relying upon the Adjutant-General's report of the facts, which does not truly represent the facts of record. If Mr. Poinsett had examined with half an eye the correspondence and the orders, he could not have failed to discover the wrong done to you, and the violation of official integrity amounting to dishonesty. Your application failing here, you should have applied to the President.

Your next application was to Secretary Spencer, Secretary of War, now or lately under the present Chief Magistrate, as appears from your memorial. Mr. Spencer answered somewhat as Mr. Poinsett, that he considered your resignation as perfect and effectual as accepted to take effect the 31st of July, and then stultified the assertion by saying you were entitled to be paid as a first lieutenant up to the 31st of October, the period specified in your letter of resignation.

Now, if your resignation, as alleged to have been accepted to take effect the 31st of July, was, as he says, "perfect and effectual," you certainly were not an officer *after* that date; and not being an officer you could not receive pay, etc., up to the 31st of October—that is, for three months. If you were entitled to pay, etc., up to the latter date, then you were still in the service, for you could not be in as to pay and out as to commission. So Mr. Spencer's argument or reasoning was mere nonsense, neither agreeing with facts nor logic. Mr. Spencer, as you rightly suspected, acted upon the misrepresentations of the Adjutant-General and prejudicial counseling of General Scott, whose well-known exquisite sense of justice and right is regulated according to his personal inclinations and perverted conceptions.

I have gone through the memorials and various documents, and as I progressed my interest was excited, for the case presented in itself so much wrong—premeditated wrong by high officials—I felt that I should examine it thoroughly with Major Donelson, and I write out my understanding of the matter, notwithstanding I am in constant pain, and have to rest very often, but it is on the side of justice and right I am engaged. You have been very improperly treated, and had you come to me after General Cass left the War Office, I should have righted you, and punished Macomb, Jones, and Kearney for acting as they did towards you, and had the official records cleared of falsification.

I say you have never ceased to be in the Army. Your resignation amounted to nothing. You did not resign your office of first lieutenant. You were fully entitled to the benefit of my directions published in General Orders No. 43, as you applied for orders under it. You were fairly and justly so entitled, and your constant efforts to have your rights recognized is creditable to you. I hope you will persevere.

If I were President, I would put you back if it made you colonel of the regiment, and I hope President Tyler, to whom you should appeal, will order your re-instatement and promotion to the position your commission as first lieutenant under the laws entitle you to. You are at liberty to show this letter to the President.

I remain, very respectfully, your friend,

ANDREW JACKSON.

TREASURY DEPARTMENT, July 11, 1882.

SIR: I have the honor to inclose herewith copies of papers in the claim of James W. Schaumburg for pay and allowances as lieutenant of dragoons from July 1, 1836, to March 24, 1845, and to recommend that authority be given to the accounting

officers of the Treasury to audit and allow the same, and that an appropriation of \$11,000, or so much thereof as may be necessary, be provided for its payment.

Very respectfully,

CHAS. J. FOLGER, *Secretary.*

Hon. WILLIAM B. ALLISON,

Chairman Committee on Appropriations, United States Senate.

Your committee adopt this as its present report and report back the bill (S. 954) without amendment, and recommend its passage.

Your committee adopt the foregoing as its present report and report back the bill (S. 986) without amendment, and recommend its passage.

